PERBADANAN JOHOR & ORS

v.

SYED HUSSEIN ALATTAS & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUIT NO: S2(S5)-23-36-1997]
3 MAY 2001

TORT: *Defamation - Libel - Whether contents in letter defamatory - Book cover and first two chapters in draft form - Whether constitutes publication - Whether amounts to defamation*

TORT: *Defamation - Libel - Innuendoes - Effect on plaintiffs - Test - Whether that of the "ordinary person"*

TORT: *Defamation - Libel - Defamatory book written for benefit of second and third defendants - Whether second and third defendants had concurred with the publications*

TORT: *Defamation - Libel - Defence of justification - Whether available - Defence of fair comment on matters of public interest - Qualified privilege - Whether defence failed - Whether defendants actuated by malice*

In this defamation suit, the plaintiffs, *ie*, a state agency (the "first plaintiff"), chief executive officer or CEO of the first plaintiff (the "second plaintiff"), the ex-managing director of Damansara Realty Berhad or DRB (the "third plaintiff") are seeking injunction, damages including aggravated damages and costs for libel against the defendants, *ie*, a full time political writer (the "first defendant"), one managing director of the third defendant (the "second defendant") and a private limited company (the "third defendant"), arising from a letter and certain other publications.

The chronology of events that triggered this suit began when the second defendant wrote a letter to the first defendant seeking the latter's assistance in negotiating with the first plaintiff over what the second defendant alleged was a promised commission of RM2 million made by the third plaintiff for introducing the first plaintiff to certain parties to enable the first plaintiff to take over DRB. On receipt of the letter, the first defendant made attempts to resolve the issue of the commission but was dissatisfied with the manner he

was treated by the second plaintiff. Subsequently, the first defendant handed the third plaintiff a cover of a book that the first defendant had written about the first plaintiff, entitled "Johor Corporation". Within the cover was enclosed his first two chapters and it is these publications which are alleged to contain defamatory material pertaining to the plaintiffs.

The issues for the court to consider; (i) whether the letter from the second defendant to the first defendant was defamatory; and (ii) whether the first defendant's publication of the book cover and first two chapters were defamatory.

Held:

[1] Looking at the contents of the letter, it could not be termed as defamatory or connoting any defamatory meaning. It was nothing more than a suggestion by the second defendant that the first plaintiff should be honest in its dealings with the public and that the third and second plaintiffs should honour their responsibilities.

[1a] The rest of the passage in the letter were mere generalised statements spoken by a person utterly frustrated with the conduct of the plaintiffs which the second defendant found unacceptable. If such like words can be construed as defamatory, then freedom of speech will bear the iron shackles of intolerence.

[2] The first defendant in his defence claimed that the first two chapters with the book cover were only in draft form, *ie*, a test print and therefore there was no publication as it was not ready for the readers' market. This type of defence mocks the very essence of the word publication. What the first defendant had done was to deliberately publish a permanent form of book cover and within it enclosed his first two chapters which he gave to the publishers to print. Whether the first defendant calls it unedited or unexpurgated, he had disseminated it. That constitutes publication.

[3] The court is satisfied that the words written of the plaintiffs were highly defamatory. The cover of the first defendant's book carried words which gave an open invitation to be sued. By cleverly juxtapositioning the words "The Thief Of The People" between the words "Johor Corporation" and a smiling picture of the second plaintiff on the cover, the first defendant clearly intended to refer to the Johor Corporation and the second plaintiff as thieves.

[3a] Even the innuendoes affect the plaintiff. The second paragraph in the back cover could be understood to mean that the second plaintiff is unqualified to be the CEO of the first plaintiff. The meanings given by the plaintiffs to the innuendoes pleaded in the statement of claim are accepted.

[3b] Applying the objective test when considering whether a statement is defamatory of the plaintiffs, it is found that any reasonable man to whom the publications were made would understand them to be defamatory. The published words would excite against the plaintiffs the adverse opinion of right thinking members of society even if no one believes such statements to be true.

[4] Since the first defendant had given copies of the book cover and the two chapters to the third plaintiff with the intention that the latter would read them, this satisfies the publication in respect of the words complained of to the third plaintiff in relation to the first and second plaintiffs. As intended by the first defendant, the third plaintiff did give the copies to the second plaintiff who confirmed he had read it. This is sufficient publication of the words complained of to the second plaintiff in relation to the first and third plaintiff.

[5] The second and third defendants disassociated themselves from the first defendant's book cover and two chapters by claiming that they were published without their mandate and concurrence. However, the first defendant had admitted in his defence that he wrote the book cover and the two chapters with the cooperation of the second and third defendants. As such, it is unacceptable that the second and third defendants were not aware of the existence of these publications or were not party to it, which were written for their benefit.

[6] The first defendant's defence of justification and fair comment as a matter of public interest fails by the agenda of the defendants for the said publication publishing the book cover and the two chapters which were evidently for purposes of self-gain. It was a concerted effort by all three defendants actuated by malice so that the plaintiffs would be forced to capitulate to their demands on the issue of the commission. Similarly, the second and third defendants' defence of qualified privilege and fair comment can be disposed of.

Per Curiam:

[1] There has been a great deal of comment in the newspapers relating to the large awards in defamation suits. Even the learned Chief Justice has observed that large awards should not be made. The courts must always be in sync with the pulse of the people. If large awards are deprecated and when there is a move to even limit awards by legislations then the courts must take the cue and make such as would reasonably compensate the parties claiming, whilst at the same time acting as a deterrent against future publications. The award must reflect a weighed balance between these two consideration.

[Defendants liable. Permanent injunction restraining defendants or their agents from publishing similar publication.]

Case(s) referred to:
Tjanting Handicraft Sdn Bhd & Anor v. Utusan Melayu (Malaysia) Berhad & Ors *Suit No. S2-23-72-1999*

Other source(s) referred to:
A Pen Joyfully Dipped In Venom, Asiaweek

For the plaintiff - Zainal Abidin Jamal (Tajul Arafat Mohd Razali with him); M/s Zainal Abidin & Co
For the 1st defendant - Gobind Singh Deo; M/s Karpal Singh & Co
For the 2nd defendant - In person
For the 3rd defendant - K Anandaraj; M/s Mohamad Jefri, Anandaraj, Paul & Associates

Reported by Raja Vishnu Sivarajah

JUDGMENT

RK Nathan J:

The Dramatis Personae

The 1st plaintiff is a State agency established under the Enakmen Perbadanan Johor 1968. It was known as Perbadanan Kemajuan Ekonomi Negeri Johor and subsequently changed its name to Perbadanan Johor by virtue of Enakmen Perbadanan Johor 1995. As a body corporate the 1st plaintiff has full power and authority under its corporate name to sue or be sued.

The 2nd plaintiff (53 years) is the chief executive officer (CEO) of the 1st plaintiff since 1 January 1982 and is one of the two authorised representatives of the 1st plaintiff in these proceedings. The 3rd plaintiff

(47 years) was the managing director of Damansara Realty Berhad (a public listed company whose shares are listed on the main board of the Kuala Lumpur Stock Exchange) from 28 February 1996 until 15 August 1999. He became a businessman since he left his post in Damansara Realty Berhad (DRB).

The 1st defendant (59 years), otherwise known as Pak Habib, is a full time political writer who has written 40 books. He prides himself as a "famous and feared political writer". The 2nd defendant (40 years) is the managing director of the 3rd defendant. He also carries on some other businesses and describes himself as a businessman. The 2nd defendant and the 3rd plaintiff were friends and knew each other since 1984 when they met in Australia where they attended courses at the Securities Institute of Australia in Sydney. The 3rd defendant is a private limited company.

The Plaintiffs' Claim

The plaintiffs are seeking an injunction, damages including aggravated damages and costs for libel against the defendants arising from a letter dated 19 May 1997 (the letter) written by the 2nd defendant to the 1st defendant alleging *inter alia* that "an institution like JSEDC (the 1st plaintiff) should be honest in its dealing with the public and responsibilities of its officers like Tuan Haji Hans (the 3rd plaintiff) and Dato' Mohd. Ali (the 2nd plaintiff) should be honoured".

Also in the said letter the 2nd defendant is alleged to have said of the 3rd plaintiff:

> Tuan Haji Haris will not become the Managing Director of Damansara Realty Berhad today without my help. As a personal friend he has let me down, as a professional and a director of JSEDC he has impaired his reputation and the image of JSEDC.

The Letter That Triggered This Suit

The 2nd defendant wrote the letter to the 1st defendant seeking the latter's assistance in negotiating with JSEDC (the 1st plaintiff) over what the 2nd defendant says was a promised professional fee of RM2 million for introducing the 1st plaintiff to certain parties to enable the 1st plaintiff to take over a public listed company (DRB). The 2nd defendant stated in that letter that the 3rd plaintiff and he had met in 1984 when they were in Australia and that it was the 3rd plaintiff who had been to see him later with the offer of the professional fee. At that meeting the 3rd plaintiff had outlined his requirements for a suitable public listed company. The 2nd defendant then identified DRB as a suitable company because of its market capitalisation, and

also because it had a large spread of shareholders who were UMNO members with Tan Sri Ibrahim (Tan Sri) having a controlling block of shares. Since the company was not at that moment performing well and as its share price was then low, the 2nd defendant identified the said company as a possibility. He made the necessary arrangements and then informed the 3rd plaintiff who was very excited about the possible purchase. The 3rd plaintiff then directed the 2nd defendant to prepare a confidential brief for immediate presentation to the 1st plaintiff's investment committee. The 2nd defendant said in the letter that he prepared the said brief and faxed it to the 3rd plaintiff who informed him late that day that the investment committee had granted the approval to purchase DRB provided the 3rd defendant was able to furnish relevant details which included, a potential valuation of DRB shares, given the fact that the shares were then trading at RM1.20 per share and Tan Sri was asking for RM2 per share. He also sought details of outstanding legal matters that might prejudice a buyer upon takeover, and also wanted an updated list of shareholders of DRB to enable the 1st plaintiff to determine majority control position. After the 2nd defendant had furnished all details, the letter to the 1st defendant stated that the 3rd plaintiff had promised to pay the 3rd defendant a success fee of 1% of the total consideration. That was confirmed in writing by a letter dated 7 November 1995. Unfortunately this letter was never produced. The 2nd defendant further stated that the 2nd and 3rd plaintiffs then met with Tan Sri at his residence and it was agreed that the 3rd plaintiff would take over as the managing director of DRB. The deal went through but he lamented that he was not given the fee as promised. The 3rd plaintiff refused to take his calls and through their present solicitors the 2nd and 3rd defendants were offered RM100,000 for their services which they refused.

Being dissatisfied with the treatment accorded, the 2nd defendant ended his letter as follows:

> I hope you can bring this matter up to Menteri Besar and explain to him our dilemma. We feel that an institution like JSEDC should be honest in its dealing with the public and responsibilities of its officers like Tuan Haji Haris and Dato' Mohd Ali should be honoured.
>
> Tuan Haji Haris will not become the Managing Director of Damansara Berhad today without my help. As a personal friend he has let me down, as a professional and a director of JSEDC he has impaired his reputation and the image of JSEDC. We hope you can assist in settling this matter amicably.

The 1st Defendant Enters The Fray

On receipt of the said impugned letter the 1st defendant then met the 2nd plaintiff at his office on or about 21 July 1997 and requested him to intervene to resolve the issue of the commission due to the 2nd and 3rd defendants. The 2nd plaintiff then directed the 1st defendant to see the 3rd plaintiff as he, the 2nd plaintiff, said he had nothing to do with the alleged commission. Dissatisfied with the manner in which he was treated by the 2nd plaintiff, the 1st defendant informed the 2nd plaintiff that he was in the process of writing a book on the 1st plaintiff. Subsequently he met with the 3rd plaintiff on 31 July 1997 and handed to him a cover of a book entitled "Johor Corporation". Those words were printed against a background of the Johor Corporation building with a smiling picture of the 2nd plaintiff with the words "The Thief Of The People" in white print. The hardback cover of the intended book contained the following:

JOHOR CORPORATION

THE THIEF OF THE PEOPLE

They say the Johor Corporation has swept every business opportunity that had existed.

In 1995, a private investment bankers, CT Capital Partners arranged a takeover of Damansara Realty at a request of Haris Haji Hamid, the Chief Investment Officer of Amanah Johor, the investment arm of the Johor Corporation. After the presentation at the Johor Corporation office Haris had agreed to pay a success fee of 1 per cent of the total consideration. Haris confirmed this in his letter dated November 7, 1995. When the term of the arrangement had been agreed upon, Christopher Tiong of CT Capital Partners arranged the meeting of Dato' Mohd Ali Hashim, the Chief Executive of Johor Corporation with Tan Sri Ibrahim which led to the takeover of Damansara Realty by the Johor Corporation. However when the transaction was duly completed, through its lawyer, Ali only willing to make a payment of RM100,000 to the private investment bankers. Thus the banker had been robbed of its commission for arranging the takeover.

Such example is only a tip of the iceberg. When Tan Sri Haji Bashir Ismail pioneered the state government body created by the Johore Enactment 4 of 1968, the Federal Agricultural Director proved he was a shrewd businessman and CEO. Known to be a man of principle Bashir took Johor Corporation to corporate stardom. When he left, he was succeeded by Ali Hashim, the ex-Manager of Tiram Tours Sdn Bhd, a minor subsidiary of the Eastern Plantation Agency who managed Kulim Malaysia Berhad. Ali took over Johor Corporation on a silver platter managed the state government body in a different manner.

Johor Corporation - THE THIEF OF THE PEOPLE - is another work of S.H. Alattas. Though this one is a major deviation from his usual political stuff, nonetheless the primary ingredient of the author remain intact. Find out more about Johor Corporation in this book. It's another S.H. Alattas' contribution to the public. And it's another of his terrible nightmares.

Part of the 1st chapter of the said book needs to be reproduced. It reads as follows:

CHAPTER 1

MEMBUJUR LALU

(COME WHAT MAY)

On July 21, 1997, I went to see Dato' Mohd Ali Hashim, the Chief Executive of the Johor Corporation as well as the author of the book 'Membujur Lalu'.

I deliberately choose the title of this introductory chapter to be the same with the title of his book because, as far as his book is concerned, it is a far cry from being a management case-study presentation showcase in the tradition of Peter Drukker or Akio Morita. It does not say the true history of Johor Corporation since its inception in 1968 and Ali's attempt to play a role of management 'guru' does not only fail miserably but the content of the book and its title reflects what kind of person Ali is. In our Malay tradition, anyone who resorts to "come what may" (Membujur lalu melintang patah) literally means by hook or by crook, beg, borrow or steal. He is a man of no conscience, a man who is already spiritually and morally bankrupt. And that is the author who tries to reflect himself as interpreted by readers who knew what 'membujur lalu, melintang patah' is all about. So the cover of his book speaks for himself.

A person who had confessed and confirmed himself to this notion, would ignore the tradition, culture, manners, etiquette and so on. Come what may, but his objective must be fulfilled. This is a Machiavellian dirty tactic in its ugliest form. And this the man I was about to meet. Put yourself in my shoes, how would you feel? Nervous or excited!

But before I go on to story you more about Ali and what has become of Johor Corporation and the people that he led, let me story you the story what happened to me on that afternoon of July 21, 1997.

On that afternoon, after having lunch at the Kota Raya Makan Stall, at the famous Mee Baidali, I walked down by the escalator to where the Johor Corporation new corporate headquarters is located. Twenty-five years ago this place was known as Kampung Pahang. Not many people knew why it was called Kampung Pahang when then, most of the people who stayed here were from Pahang. But in its heydays, everyone knew what and why was Kampung

> Pahang famous for. Just like the people of Johor know the 'jimque', the present Jalan Lumba Kuda Flat is. To the people of Kuala Lumpur, it is the 'belakang mati' of Jalan Tunku Abdul Rahman, where a cock-a-doodle-do, any cuckoos will do, 'melintang patah membujur lalu'.
>
> I guess Ali had chosen an appropriate site to house the Johor Corporation new headquarters as the state agency changes its corporate culture from 'developing the Bumiputera entrepreneurship' as implied by the Johor State Enactment 4 of 1968 to the new culture of 'membujur lalu' introduced by Ali. Because the headquarters of Johor Corporation is here, I fear one day the inside story of Johor Corporation might turn into the stigma of Johore Road, Singapore, where at one time was the station of the Green Bus of Singapore.
>
> As I stepped into the office, a receptionist asked me politely whom do I intend to see. And I told her I would like to see Dato' Mohd Ali Hashim.

The 1st defendant also handed to the 3rd plaintiff a copy of an article that appeared in Asiaweek of 18 July 1997. This article entitled "*A Pen Joyfully Dipped In Venom*" describes the 1st defendant as "the scourge of miscreant elements of Malaysian politics" admired and feared by many.

The Plaintiffs' Case

The plaintiffs are seeking an injunction, damages including aggravated damages and costs for libel against the defendants in respect of all these publications.

The Defence

The 1st defendant in his defence admitted writing the book cover and the first two chapters. He also admitted that they were written "with the co-operation of the 2nd and 3rd defendants". He also pleaded writing in good faith and also relied on justification. It is also his claim that the first two chapters with the book cover are only in draft form and do not contain the finally edited versions and therefore there is no publication as the same is not ready for the readers' market. What was given to the 3rd plaintiff was only a test print. The 1st defendant also relied on fair comment on a matter of public interest in that the conduct of the plaintiffs was calculated to produce injustice to the poor and needy.

The 2nd defendant in his defence admitted that he wrote the impugned letter to the 1st defendant as agent of the 3rd defendant. He also admitted that the 1st defendant acted as mediator for the 3rd defendant to seek a settlement of the commission due to the 2nd and 3rd defendants. He also admitted that as the 1st defendant sought a chronology of the events that transpired, he set

them down by way of the said impugned letter as acting for the 3rd defendant. The 2nd and 3rd defendants disassociated themselves with the 1st defendant's book cover and the two chapters and contended that they were published without the mandate and concurrence of the 2nd and 3rd defendants. They denied that there was any conspiracy between the defendants in respect of the publication. They relied on qualified privilege and fair comment as defences.

Kuala Lumpur High Court Civil Suit No. S5-22-395-96

In this suit the 3rd defendant had filed a claim against the 3rd and 1st plaintiffs herein as the 1st and 2nd defendants respectively, and claimed the sum of RM2 million as commission. Since that suit is still pending, I shall refrain from making any findings in respect of the said RM2 million.

Findings Of The Court

Is the letter dated 19 May 1997 from the 2nd defendant to the 1st defendant, defamatory of the plaintiffs? As to whether the 2nd defendant wrote it to benefit himself or for the benefit of the 3rd defendant, the answer, to my mind is immaterial. It would seem from the evidence led that the 2nd defendant is the *alter ego* of the 3rd defendant. The 2nd defendant has also admitted writing it as the agent of the 3rd defendant. The 2nd defendant has testified that he was the key player in the negotiations that helped the 1st plaintiff get control of DRB. Looking at the contents of the said letter I cannot find that the same is in any way defamatory of the plaintiffs. The plaintiffs refer to the following passages in the said letter to allege libel:

> (1) ... an institution like JSEDC (the 1st plaintiff) should be honest in its dealing with the public and responsibilities of its officers like Tuan Haji Haris (the 3rd plaintiff) and Dato' Mohd Ali (the 2nd plaintiff) should be honoured.
>
> (2) Tuan Haji Haris will not become the Managing Director of Damansara Realty Berhad today without my help. As a personal friend he has let me down, as a professional and director of JSEDC he has impaired his reputation and the image of JSEDC.

I find nothing defamatory in suggesting that an institution like the JSEDC should be honest in its dealings with the public. This is nothing more than a devout prayer for such a wish. As for the rest of the passage that requires JSEDC's officers like the 3rd and the 2nd plaintiffs to honour their responsibilities, such a statement can in no sense be termed as defamatory or connoting any defamatory meaning. The second passage again cannot be said to contain anything defamatory of the plaintiffs. By merely saying that by

one's conduct a person has impaired his reputation and had affected the image of his employer, I cannot hold such words as being defamatory of the plaintiffs. These are mere generalised statements spoken by a person utterly frustrated with the conduct of the plaintiffs which he finds unacceptable. If such words or such like words spoken in such tenor and in such mollified terms can be construed as defamatory, then freedom of speech will bear the iron shackles of intolerance.

What is left to be considered is the 1st defendant's publication of the book cover and the first of the two chapters he had written.

Unedited Version

The 1st defendant states that what he had written was only a draft. It is nothing more he says than an unedited, unexpurgated version of his thoughts and therefore since it is not final and complete it cannot constitute the authorised edited version. This type of defence mocks the very essence of the word publication. What the 1st defendant had done was to deliberately publish a permanent form of a book cover with the back of the cover carrying words of the plaintiffs which they contend are defamatory and within the cover the 1st defendant had enclosed his first two chapters. These he gave to the publishers to print. The printed cover in red, black and white carries in bold print just above the picture of the 2nd plaintiff the words "The Thief Of The People". Whether the 1st defendant calls it unedited or unexpurgated he had disseminated it. That constitutes publication.

Are The Words Defamatory?

Clearly they are. To call an institution such as the 1st plaintiff, "The Thief Of The People" is an open invitation to be sued. By cleverly juxtapositioning the words "The Thief Of The People" between the words "Johor Corporation" and a smiling picture of the 2nd plaintiff, the 1st defendant clearly intends to have the ignominious reference to a thief, refer both to the Johor Corporation and to the 2nd plaintiff.

Whilst the 2nd defendant had sought the 1st defendant's assistance to mediate a settlement of the claim, the 1st defendant, seeking to champion the 2nd and 3rd defendants' cause, entered the fray. Whilst intending nobly to act as the proverbial knight in shining armour charging to the defence of someone wronged, instead, the 1st defendant rampaged through the lives of the plaintiffs like a bull in a China shop. He paid scant attention to the hurt and anguish that he would cause the plaintiffs by his arrogant and defiant stand. When

cross-examined with reference to the numerous allegations and innuendoes he had levelled against the 1st plaintiff he defiantly answered, "You can take it as a compliment or the other way round." Even before the civil suit filed by the 3rd defendant, which would have determined as to whether there was indeed the promise made by the 3rd plaintiff to pay a commission to the 2nd and 3rd defendants and that the said commission was indeed RM2 million, had been heard and disposed of, the 1st defendant concluded as facts, the events as narrated to him by the 3rd defendant through the 2nd defendant. I am satisfied that the words written of the plaintiffs were highly defamatory. Applying the objective test when considering whether a statement is defamatory of the plaintiffs, I find that any reasonable man to whom the publications are made would understand them to be defamatory of the plaintiffs. Clearly the published words would excite against the plaintiffs the adverse opinion of right-thinking members of society even if no one believes such statements to be true.

Even the references to innuendoes affect the plaintiffs. The second paragraph as written by the 1st defendant in the back cover can be understood to mean that the 2nd plaintiff is not fit or is unqualified to be the CEO of the 1st plaintiff and clearly the statement was intended to disparage the 2nd plaintiff as the CEO of the 1st plaintiff. I accept the meanings given by the plaintiffs to the innuendoes pleaded in the statement of claim. The defendants' response to the innuendoes was in the form of a bare denial. In *Tjanting Handicraft Sdn Bhd & Anor v. Utusan Melayu (Malaysia) Berhad & Ors* Suit No. S2-23-72-1999 I said at p. 47/48 of the said judgment as follows:

> The plaintiffs had in paragraph 7 of the statement of claim pleaded innuendo and gave detailed particulars of the innuendo as is required by O. 78 r. 3(1) of the Rules of the High Court 1980 (the RHC). The defendants' response to this was a bare denial of the meaning and understanding attributed to the words of the plaintiffs. The defendants ought to have realised that in many cases the words complained of in a libel or slander suit may be defamatory of the plaintiff both in their natural and ordinary meaning and also by way of an innuendo meaning. Carter Ruck on *Libel & Slander* 5th Ed. states at page 45 that, 'In such circumstances, the innuendo meaning constitutes a distinct and second cause of action for which a separate award of damages can be claimed.' In this case since there is a mere denial of the innuendo the plea of justification must fail if the words are found to bear that meaning. However, having read the entire defence again I will accept paragraph 13 of the defence with its particulars, as entering a plea of justification to the innuendo meaning alone. However, having considered the particulars pleaded in their entirety I am satisfied that the defendants have failed to justify the innuendo meaning as maintained by the plaintiffs.

Likewise in this case before me the defendants have failed to justify the innuendo meanings that the plaintiffs have attributed to the impugned statements.

Publication

The 1st defendant at the meeting with the 3rd plaintiff on 31 July 1997 had given copies of the book cover and the two chapters together with the article in the Asiaweek extolling the 1st defendant's ability to strike fear and terror in the hearts of Malaysian politicians. They were given by the 1st defendant to the 3rd plaintiff no doubt with the intention that the latter would read them, which the 3rd plaintiff confirmed he did. This satisfies the publication in respect of the words complained of to the 3rd plaintiff in relation to the 1st and 2nd plaintiffs. The 1st defendant in his examination-in-chief admitted he knew that the 3rd plaintiff would indeed give to the 2nd plaintiff copies of the book cover and the two chapters, to read. As intended by the 1st defendant, the 3rd plaintiff did in fact give copies of the same to the 2nd plaintiff who confirmed he had read the same. This is sufficient publication of the words complained of to the 2nd plaintiff in relation to the 1st plaintiff and the 3rd plaintiff.

Intention To Publish The Book

Numerous passages evidencing the 1st defendant's clear intention to publish the book are found in the book cover and in the two chapters. In chapter 1, referring to his conversation with the 2nd plaintiff (when he visited him on 21 July 1997) he wrote as follows:

> "Dato', you're talking to a writer," I said. "Every word of yours is an evidence. If you're not happy with what I am going to write, then you can sue me. After all, this is not the first time somebody take me to the court for defamation. Anyway, I don't care. I'm transparent. So I will leave this to the people to be the judge and history will prevail the truth," I said.

Again in chapter 1 he wrote:

> "But I think since you like to go to the court so much, you might as well take me to the court also. I am going to publish the book. And when this matter go to the court, my book will sell better. And you know that millions of people are waiting for Dato' Ali to be challenged by Syed Hussein Alattas."

Again in chapter 1, he wrote:

> ... "And remember Dato', once the book is published, the world will know the truth."

Since the 1st defendant has admitted in his defence that he wrote the book cover and the two chapters with the cooperation of the 2nd and 3rd defendants, I have no hesitation in finding that the 2nd and 3rd defendants were well and truly aware of the existence of these publications. In fact, they were written for the benefit of the 2nd and 3rd defendants and therefore I cannot accept the evidence of the 2nd and 3rd defendants that they were unaware of the said publication and that they were not a party to the writing nor to the publication. I have no hesitation in concluding from the evidence adduced that all the defendants were actuated by malice and intended the publication to reach the general public when the book with such an obnoxious title was completed. The 1st defendant with malice aforethought and in cahoots with the other defendants published the book cover with the back page and the initial two chapters, as a threat so that the plaintiffs would be forced to capitulate to their demands. This was a concerted effort by all three defendants and orchestrated with the 1st defendant's theatrical fanfare and aplomb in his confrontation with the 2nd plaintiff. The 1st defendant used against the plaintiffs, the same bold and confrontational stance that he had adopted towards politicians against whom he had made scathing attacks in respect of their conduct and affairs in his previous writings. He had also admitted that he had written many books on such politicians who would quiver at the mention of his name. He also admitted that he had sold many copies of these books. All these were threats to whittle down the plaintiffs' resistance so that the 2nd and 3rd defendants' request for a settlement could be achieved through the 1st defendant. In the light of my findings it is obvious that the 1st defendant's defence of justification and fair comment as a matter of public interest must fail. Even if there was anything of public interest especially when the 1st plaintiff is a body corporate and which is meant to assist the poor and needy, the issue of public interest is stifled by the agenda of the defendants for publishing the book cover and the two chapters which was solely for purposes of self-gain. The issue of the matter being of public interest was nothing more than a front to give the defendants an opening to pressurise the plaintiffs into submission. In the same way the 2nd and 3rd defendants' defence of qualified privilege and fair comment can be disposed of.

I therefore find for all the plaintiffs against all the defendants.

Damages

Libel is actionable *per se*, that is, without proof of actual damages. In the assessment of damages, the court is entitled to take into consideration the position and standing of the plaintiffs, the nature of the libel, the extent of the publication, the mental distress, hurt, anxiety and anguish caused to the

2nd and 3rd plaintiffs as a result of the libel, the conduct of the defendants from the time of the publication of the libel, down to the very moment of the verdict and last but not least the absence and refusal of any correction, retraction or apology.

The 1st plaintiff is a reputable State agency. It controls various public listed companies whose shares are listed on the main board of the Kuala Lumpur Stock Exchange. The 1st plaintiff's investment is highly diversified both locally and overseas. The National Economic Action Council acknowledges the important role played by the 1st plaintiff as a commercially and financially autonomous entity. It has also maintained its traditional role of promoting Bumiputra entrepreneurship and in the establishment of the Bumiputra Commercial and Industrial Community. The 1st plaintiff is the only State agency in Malaysia which contributes 10% of its profit to the State Government. The long list of awards received by the 1st plaintiff is a clear recognition of its excellence in management and industry.

The 2nd plaintiff is the CEO of the 1st plaintiff, a well known corporate and public figure and a member of numerous national bodies. He is president of the local authority of Pasir Gudang and the chairman of various public listed companies. He is a member of the committee for the restructuring of society of the National Economic Action Council II. His active involvement as president of numerous sports associations shows his commitment to the well being of the community. In the course of the trial he was conferred the title "Tan Sri" by His Majesty, the Yang Di Pertuan Agong. He was named as the director of the year by the Malaysian institute of directors in 1995 and entrepreneur of the year by the Rotary Club of Johor Bahru in 1994.

The 3rd plaintiff was the managing director of DRB at the time the libel was published. He was an officer of the 1st plaintiff when he held the post of the chief investment officer of the investment division of the 1st plaintiff, managing more than RM1 billion in various investment funds. He is also the chairman of Koperasi Belia Islam Malaysia and awarded a life membership in Angkatan Belia Islam Malaysia.

The words complained of had cast serious imputations on the business and commercial standing of the plaintiffs and their personal integrity, credit and reputation. To be called thieves, robbers, cheats, morally and spiritually bankrupt, Machiavellian, and even "my boy" in a derogatory sense, must certainly be wounding and very painful. The 2nd plaintiff described the words complained of aptly when he said that these words were "obnoxious, offensive to the core and below the belt".

The 2nd plaintiff obviously received most of the blows. The 1st defendant depicted him as a person who is devoid of morality, perfidious in conduct, cunning and unprincipled in behaviour.

The defendants had adamantly maintained their libellous view and made no effort whatsoever to hide their ill feelings towards the plaintiffs right up to the trial. The absence of, or refusal of any correction, retraction or apology remains until the date of writing this judgment.

I note of late there has been a great deal of comment in the newspapers relating to the large awards in defamation suits. Even the learned Chief Justice has observed that large awards should not be made. The courts must always be in sync with the pulse of the people. If large awards are deprecated and when there is a move to even limit awards by legislation, then the courts must take the cue and make such awards as would reasonably compensate the parties claiming, whilst at the same time acting as a deterrent against future publications. The award must reflect a weighed balance between these two considerations.

Now the 1st plaintiff has prayed for a sum of RM5 million as general damages and RM1 million as aggravated damages. The 2nd plaintiff has sought RM1 million as general damages and RM500,000 as aggravated damages, whilst the 3rd plaintiff has sought RM750,000 as general damages and RM300,000 as aggravated damages. As I have narrated the background of the plaintiffs and their standing in society the award I make in their favour must equally reflect their standing in society. I must also note that all the defendants made no submissions on the issue of damages. Whilst they are entitled to leave it to the court to award a reasonable sum surely it is the duty of the defendants to at least put on record their objection to the sums suggested by the plaintiffs. Notwithstanding the defendants' silence and taking all factors into consideration, I award the 1st plaintiff RM350,000 as general damages and RM300,000 as aggravated damages, the 2nd plaintiff RM500,000 as general damages and RM500,000 as aggravated damages, the 3rd plaintiff RM150,000 as general damages and RM100,000 as aggravated damages.

All three defendants will be equally liable for the above award which will carry interest at 4% per annum from the date of filing of this suit to date of payment and costs. The plaintiffs will also have a permanent injunction against all the defendants restraining them or their servants or agents from publishing the said libel or such similar publication.